

REMARKS

Applicant has carefully reviewed and considered the Office Action mailed on August 6, 2003. Claim 124 is amended to correct a typographical error. Claims 1-84 and 117-124 remain pending in this application. Of these pending claims, claims 3, 5, 6, 8-13, 15-17, 20-55, 58, 60-61, 64-72, 75, 77, 78 and 81-83 have been withdrawn from consideration.

Reservation of the Right to Swear Behind References

Applicant maintains its right to swear behind any references which are cited in a rejection under 35 U.S.C. §§102(a), 102(e), 103/102(a), and 103/102(e). Statements distinguishing the claimed subject matter over the cited references are not to be interpreted as admissions that the references are prior art.

§102 Rejection of the Claims

Claims 1-2 and 56-57 were rejected under 35 USC § 102(b) as being anticipated by Shimoji et al. (U.S. 5,332,915). Applicant respectfully traverses the rejection for at least the following reason.

With respect to independent claims 1 and 56, Applicant is unable to find, among other things, in the cited portion of Shimoji et al. an injector medium operably disposed with respect to the tunnel medium and the high K charge blocking and charge storing medium to provide charge transport by enhanced tunneling, as recited in the claims. Applicant respectfully traverses the characterization that the high dielectric film 2 having a high dielectric constant of at least 10 is an injector medium to provide charge transport by enhanced tunneling. Should the Examiner maintain the rejection, Applicant respectfully requests the Examiner to provide a reference pursuant to M.P.E.P. § 2144.03 to support this characterization. Applicant respectfully asserts that the rejection does not include a clear and unmistakable technical line of reasoning to uphold this characterization. Claim 2 depends on and is believed to be patentable at least for the reason provided with respect to independent claim 1; and claim 57 depends on and is believed to be patentable at least for the reason provided with respect to independent claim 56.

Applicant respectfully requests withdrawal of the §102 rejection, and reconsideration and allowance of the claims.

§103 Rejection of the Claims

Claims 1-2, 14, 56-57, 63, 73-74, 80, and 84 were rejected under 35 USC § 103(a) as being unpatentable over Shimoji et al.(U.S. 5,332,915) in view of Bass, Jr. et al.(U.S. 5,870,470). The patent number for Bass, Jr. et al. contains a typographical error, and should read 4,870,470. Applicant respectfully traverses the rejection for at least the following reason.

The Office Action asserts: *It would have been obvious to a person having ordinary skill in the art at the time of the invention was made to form the high dielectric film 2 including SRN as an injector medium as taught by Bass, Jr. et al. to provide good charge injecting properties that provide appreciably enhance charge conductance.* Applicant respectfully traverses this assertion of obviousness for lack of a suggestion to combine the cited references. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in prior art, not in the Applicant's disclosure. Additionally, hindsight reasoning is to be avoided.

Should the rejection be maintained, Applicant respectfully requests the Examiner to provide a reference that contains the asserted suggestion. Applicant is unable find a suggestion of an injector medium in the Shimoji et al. reference, or a suggestion of a high K charge blocking and charge storage medium in the Bass, Jr. et al. reference.

Each of independent claims 1, 56, 73, and 84 recite, among other things, a high K charge blocking and charge storing medium disposed on the tunnel medium, and an injector medium operably disposed with respect to the tunnel medium and the high K charge blocking and charge storing medium to provide charge transport by enhanced tunneling. Applicant respectfully asserts that independent claims 1, 56, 73, and 84 are patentable as this combination is not suggested in the cited portions of the references. Claims 2 and 14 depend on independent claim 1, claims 57 and 63 depend on independent claim 56, claims 74 and 80 depend on independent claim 73, and are believed to be patentable at least for the reason provided with respect to these independent claims.

Claims 4, 18-19, 59, 76 were rejected under 35 USC § 103(a) as being unpatentable over Shimoji et al.(U.S. 5,332,915) in view of Bass, Jr. et al.(U.S. 5,870,470) as applied to claims 1,

56, 73, 84 above, and further in view of Sadd et al. (U.S. 6,444,545). The patent number for Bass, Jr. et al. contains a typographical error, and should read 4,870,470. Applicant respectfully traverses the rejection for at least the following reason.

Applicant is unable to find, among other things, in the cited portions of Shimoji et al., Bass, Jr. et al., and Sadd et al. a suggestion of a high K charge blocking and charge storing medium disposed on the tunnel medium, and an injector medium operably disposed with respect to the tunnel medium and the high K charge blocking and charge storing medium to provide charge transport by enhanced tunneling.

Each of independent claims 1, 18, 56 and 73 recite, among other things, a high K charge blocking and charge storing medium disposed on the tunnel medium, and an injector medium operably disposed with respect to the tunnel medium and the high K charge blocking and charge storing medium to provide charge transport by enhanced tunneling. Claim 4 depends on independent claim 1, claim 19 depends on independent claim 18, claim 59 depends on independent claim 56, and claim 76 depends on independent claim 73, and are believed to be patentable for at least for the reason provided with respect to these independent claims.

Applicant respectfully requests withdrawal of the §102 rejections, and reconsideration and allowance of the claims.

Allowable Subject Matter

Claims 7, 62, and 79 were objected to as being dependent upon a rejected base claim, but were indicated to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant acknowledges the finding of allowable subject matter. Applicant respectfully asserts that the independent claims upon which claims 7, 62 and 79 depend are patentable at least for the reasons provided above.

Reconsideration of Withdrawn Claims

In accordance with 37 CFR 1.141, Applicant respectfully requests consideration of the claims that were withdrawn as being directed to a non-elected species upon the allowance of claim 1 or any other claim that is determined to be generic.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney ((612) 373-6960) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743

Respectfully submitted,

ARUP BHATTACHARYYA

By his Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6960

Date 11-6-03

By Ma L B
Marvin L. Beekman
Reg. No. 38,377

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 6th day of November, 2003.

Amy Moriarty
Name

Amy Moriarty
Signature